

# ACTEC<sup>®</sup>

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THE AMERICAN COLLEGE OF  
TRUST AND ESTATE COUNSEL

## **BYLAWS**

**(Amended and Restated as of March 5, 2023)**

901 15<sup>th</sup> Street, N.W., Washington, DC 20005

A Delaware Nonprofit Nonstock Corporation

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## ARTICLE I: Purposes

The purposes of The American College of Trust and Estate Counsel (“College”) are to maintain an association, international in scope, of lawyers skilled and experienced in the practice of trust and estate law (which for all purposes of these Bylaws shall include one or more of the following related practice areas: preparation of wills and revocable and irrevocable trusts; probate; trust, guardianship and conservatorship administration; transfer taxation planning and administration; integration of asset protection planning with the aforementioned practice areas; fiduciary income taxation; incapacity planning; elder law; employee benefit planning; donative planning; charitable planning, advising exempt organizations; and probate, trust, and protective proceedings litigation); to improve and reform probate, trust, and tax laws, procedures, and professional responsibility; to bring together qualified lawyers whose character and ability will contribute to the achievement of the purposes of the College; and to cooperate with bar associations and other organizations with similar purposes. The College is a nonprofit nonstock corporation organized under the laws of the State of Delaware. The College is not organized for profit and no part of its net earnings will inure to the benefit of any member or individual. On dissolution, all assets of the College will be distributed to The American College of Trust and Estate Counsel Foundation (or any successor thereto), if it is then in existence and is then organized and operated exclusively for educational or charitable purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code, and otherwise one or more organizations that are organized and operated exclusively for educational or charitable purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code, as determined by the Regents. The College shall encourage women, racial and ethnic minorities, lesbian, gay, bisexual and transgender persons and persons with special needs who are prospective candidates for election to the College to qualify for nomination and, if elected, to participate meaningfully in the activities of the College. The College shall foster and maintain a welcoming and inclusive environment for all persons.

## ARTICLE II: Membership

Section 1. MEMBERS: There are six classes of members of the College: Fellow, International Fellow, Academic Fellow, Judicial Fellow, Honorary Fellow and Retired Fellow. Members shall be elected by the Board of Regents in the manner provided herein and shall satisfy all other applicable conditions or criteria of membership.

### (a) Fellow:

To be eligible to be elected as a Fellow, a candidate must be either:

(i) a lawyer who is licensed to practice in the highest court of any state or jurisdiction of the United States, who practices in

a jurisdiction within the United States, or

(ii) a lawyer who is licensed to practice in the highest court of any state or jurisdiction of the United States, who serves as fiduciary counsel with a fiduciary services company.

To be eligible to be elected as a Fellow, a candidate must meet all of the following criteria:

(i) The candidate must have a total of no less than ten years’ experience (A) as a lawyer in the active private practice of trust and estate law or (B) as fiduciary counsel with a fiduciary services company, or (C) a combination thereof, three of which immediately and continuously precede and are continuing at the time the nomination is submitted and the candidate is elected,

(ii) The candidate must have a well-deserved outstanding reputation in the field of trusts and estates,

(iii) The candidate must have demonstrated exceptional skill in trust and estate law, and

(iv) The candidate must have contributed substantially to the field of trust and estate law by lecturing, writing, teaching, or being involved in bar activities or in the enactment of significant state or federal trust and estate legislation, or outreach, education and mentoring to diverse communities on topics and issues connected to estate planning, probate and trust.

### (b) International Fellow

To be eligible to be elected as an International Fellow, a candidate must be:

(i) a United States lawyer who is licensed to practice in the highest court of any state or jurisdiction of the United States, who practices United States trusts and estates law in a country other than the United States, or

(ii) a non-United States lawyer who meets the following requirements: (A) has been licensed in his or her jurisdiction after meeting licensing qualifications comparable to the licensing qualifications required to be a Fellow, (B) has not less than ten years experience in active private trust and estate legal practice, three of which immediately and continuously precede and are continuing at the time the nomination is submitted and the candidate is elected, (C) has a trust and estate legal practice that regularly involves cross border work between the United States and another country that requires coordination and cooperation with lawyers of both countries. For purposes of this paragraph (ii), the term “trust and estate legal practice” includes but is not limited to succession, inheritance, civil law foundations, and other private client representation typical in jurisdictions outside the United States.

(c) Academic Fellow:

To be eligible to be elected as an Academic Fellow, a candidate must meet the following criteria:

(i) The candidate must be a full-time teacher of law at a duly accredited law school,

(ii) The candidate must specialize in trust and estate law,

(iii) The candidate must have a total of not less than ten years' experience specializing in trust and estate law, as a trust and estate law teacher or a lawyer in active private practice of trust and estate law, or a combination thereof. In all cases, a candidate must spend the three years immediately and continuously preceding the nomination and election as a teacher specializing in trust and estate law,

(iv) The candidate must have an outstanding reputation in the trust and estate field, must demonstrate exceptional knowledge of trust and estate law, and must have made substantial contributions in the trust and estate field.

(d) Judicial Fellow:

A Fellow, International Fellow or Academic Fellow who becomes a judge may designate himself or herself as a Judicial Fellow. Upon ceasing to be a judge, a Judicial Fellow shall automatically revert to his or her prior membership classification.

(e) Honorary Fellow:

To be eligible to be elected as an Honorary Fellow, a candidate must be a notable lawyer, judge or justice of preeminent distinction in the United States or a notable citizen of another country who has made a substantial contribution to the trust and estate field of legal practice.

(f) Retired Fellow:

Any Fellow, International Fellow, former Fellow, former International Fellow, Academic Fellow, or former Academic Fellow who, in accordance with criteria established from time to time by the Board of Regents, has retired and elects this class of membership.

(g) Change of membership classification:

A Fellow, International Fellow, Academic Fellow, or Judicial Fellow may change his or her classification of membership only in accordance with the procedures set forth in the Requirements and Procedures established by the Board of Regents under Section 3(i) below.

Section 2. LIMITATION OF MEMBERS: The number of members of each class and the number in any geographical

location may be determined from time to time by the Board of Regents.

Section 3. ELECTION OF MEMBERS:

(a) The "Membership Administrator" (as defined in Article IX, Section 13) shall be responsible for processing all nominations for election as a Fellow, International Fellow, Academic Fellow, or Honorary Fellow.

(b) A Fellow, International Fellow or Academic Fellow in good standing may nominate a person meeting the requirements for election as a Fellow, International Fellow, Academic Fellow, or Honorary Fellow.

(c) Before a nominee may be elected as a Fellow, the Membership Administrator must conduct the following poll:

(i) In the case of a practicing lawyer, a poll by ballot of all Fellows in each jurisdiction in which the nominee practices or has practiced within the prior ten years; and,

(ii) In the case of fiduciary counsel, a poll by ballot of all Fellows in each jurisdiction in which the nominee has or has had a principal office as fiduciary counsel in the prior ten years, and each jurisdiction in which the nominee practiced within the prior ten years. In addition, in the case of fiduciary counsel, before a nominee may be elected as a Fellow, the Membership Administrator must conduct a plenary survey of all Fellows in all classes of membership, other than those being polled, soliciting a response based primarily on personal knowledge, but also inviting information learned from a reliable third party.

(d) Before a nominee may be elected as an Academic Fellow, the Membership Administrator must conduct a poll by ballot of all Academic Fellows of the College and all Fellows in each jurisdiction in which the nominee teaches.

(e) Before a nominee may be elected as an International Fellow, the Membership Administrator must conduct a poll and a plenary survey. The first shall be a poll by ballot of (i) all Fellows who are currently on the International Estate Planning Committee, (ii) all Fellows who served on the International Estate Planning Committee during the prior two years, and (iii) all International Fellows of the College. The results of the poll shall be delivered to the chair of the International Membership Committee (as defined in Article VII, Section 3), who shall review the results with the International Membership Committee, which shall recommend or not recommend the nomination. If the International Membership Committee decides to recommend the nomination, its recommendation shall be delivered to the Membership Administrator with the committee's written evaluation of the nominee. Only if the International Membership Committee recommends the nomination, a plenary survey shall be conducted of all Fellows of the

College soliciting a response based solely on personal knowledge. The results of that plenary survey shall be sent by the Membership Administrator directly to the Membership Selection Committee together with the recommendation of the International Membership Committee and its written evaluation.

(f) The results of the poll for the nomination of a Fellow and an Academic Fellow shall be sent to the chair or chairs of the applicable state membership committee or committees. Prior to each meeting of the Board of Regents, the state membership committee shall deliver to the office of the Membership Administrator the names of all nominees in the state together with (i) the nominator's written nomination, and (ii) the state membership committee's written evaluation of the nominee and whether it approves the nomination.

(g) Prior to each annual and fall meeting of the Board of Regents, the Membership Administrator shall deliver to the Membership Selection Committee (as defined in Article VIII, Section 3) the names of each nominee for whom a poll described in Subsections (c), (d) and the plenary survey described in (e) of this Section was conducted, together with (i) the nominator's written nomination, (ii) the action on the nomination (*e.g.*, approved, not approved, deferred) by the state membership committee (as defined in Article VII, Section 2) or the international membership committee (as defined in Article VII, Section 3), (iii) if approved or recommended, the state membership committee's or the international membership committee's written evaluation of the nominee, and (iv) the results of all polls described in Subsections (c), (d) and (e) of this Section.

(h) Prior to each annual and fall meeting of the Board of Regents, the Membership Selection Committee shall deliver to the Board of Regents the names of all nominees and those nominees who have been approved by the Membership Selection Committee.

(i) The Board of Regents shall consider the recommendation of the Membership Selection Committee in determining whether or not to elect a nominee. The Board of Regents elects all members.

(j) The Board of Regents shall adopt written Requirements and Procedures governing membership qualifications, nominations, polling, evaluation, and election. The Membership Selection Committee periodically may draft and recommend amendments to those Requirements and Procedures for adoption by the Board of Regents. Such Requirements and Procedures for the Election of Fellows, and amendments, when adopted by the Board of Regents, shall have the effect of a Bylaw and may not be amended or repealed except in accordance with the requirements of Article XIII, Section 2, below, except in the case of an amendment with the sole function of implementing an amendment to the Bylaws duly approved by the Board of Regents. Such

amendment to the Requirements and Procedures for the Election of Fellows may be adopted by the Membership Selection Committee upon approval by the Executive Committee, without further action by the Board of Regents.

Section 4. MEMBERSHIP DUES: Each Fellow, International Fellow, Academic Fellow, and Retired Fellow shall pay annual membership dues for their respective membership categories as determined by the Board of Regents. Judicial and Honorary Fellows shall not be required to pay dues but shall be entitled to participate in meetings and other College activities on the same basis as Fellows (including the payment of applicable fees and charges).

Section 5. VOTING RIGHTS; HOLDING OFFICE: Each Fellow, International Fellow and Academic Fellow shall have the right to vote ("voting Fellows") and shall be eligible to serve as a Regent or an officer. Judicial Fellows, Honorary Fellows, and Retired Fellows shall not have the right to vote and shall be ineligible to serve as a Regent or officer.

Section 6. TERMINATION:

(a) The membership of a Fellow, International Fellow, Academic Fellow, Judicial Fellow, Honorary Fellow or Retired Fellow shall terminate when (i) such member's license to practice law in any jurisdiction has been revoked or has been suspended for more than six months by any court or other applicable licensing agency, (ii) such member is convicted of a felony, (iii) such member enters a plea of guilty, responsible, nolo contendere, or other response, however denominated, having the effect of an admission to a felony, or acceptance of punishment for a felony, or (iv) such member's license to practice law in any jurisdiction has been surrendered or relinquished under threat of revocation or suspension. For purposes of this subsection, a revocation resulting from a voluntary surrender of such member's license other than under threat of revocation or suspension shall not be considered a revocation.

(b) Any Fellow, International Fellow, Academic Fellow or Retired Fellow who fails to pay dues by March 1 of any year shall be dropped from membership, provided that the member shall be given at least 30 days' written notice of the proposed termination and be given an opportunity to refute the proposed action, orally or in writing. The written notice shall be sent by registered or certified mail to the member at the address shown in the Membership Roster. If the member requests a hearing, the Board of Regents or a committee authorized by the Board shall hear the matter. Following the hearing, the Board or the committee, whichever hears the matter, shall decide whether the membership shall be terminated. The decision of the Board or committee, as the case may be, to terminate the membership shall be final. The effective date of the termination shall not be fewer than five days after the hearing, or if there is no hearing, the effective date of the

termination shall be five days after the expiration of the 30-day notice period.

(c) The Board of Regents may, upon application by a person whose membership has terminated pursuant to this Section, restore such person to membership upon a finding of good cause and a finding that restoration of membership would not adversely affect the College as a whole or any other member in particular. For clarification purposes, the Board of Regents may exercise its authority in accordance with this Section if the former Fellow satisfies the criteria in The Requirements and Procedures for the Election of Fellows, Section N.6.

(d) Any action challenging a termination of membership must be commenced within one calendar year of the date of termination.

Section 7. TRANSFERABILITY: Membership is not transferable and all rights of the member shall cease upon the member's death.

### **ARTICLE III: Membership Meetings**

#### Section 1. ANNUAL BUSINESS MEETING:

(a) The College shall hold an annual business meeting of the members at a time and place set by the Board of Regents. At this meeting, members of the Board of Regents must be elected and any other business may be transacted. The annual business meeting shall normally be held in conjunction with the College's annual meeting for conducting its activities ("Annual Meeting").

(b) Written notice of the annual business meeting must be given to all members at least 10 days prior to the meeting.

(c) So long as the Bylaws authorize a quorum of less than one-third of the voting Fellows, then the only matters that may be voted upon at the annual business meeting actually attended by less than one third of the voting Fellows are matters on which notice has been given.

Section 2. SPECIAL MEETINGS: A special meeting of the College may be called for any lawful purpose by the President or, if the President is unable to act, by the President-Elect; or upon the written request of a majority of the members of the Board of Regents or upon the written request signed by not fewer than five percent of the voting Fellows. Notice of any special meeting shall be given in the manner provided for an annual business meeting of the College. Notices of special meetings shall specify, in addition to the place, day, and hour of the meeting, the purpose of the meeting and the general nature of the business to be transacted.

Section 3. ADJOURNED MEETINGS AND NOTICE: Any meeting may be adjourned to another time by vote of a majority of the voting Fellows present, but in the absence of a

quorum no other business may be transacted at the meeting. When any meeting is adjourned for more than 30 days, notice of the adjourned meeting shall be given as if it were a new meeting.

Section 4. VOTING: At all meetings, voting shall be in person and not by proxy. Voting may be viva voce or by written ballot; provided that as to all matters upon which voting Fellows shall be entitled to vote a majority of the voting Fellows present shall vote affirmatively before any resolution or other matter is considered passed. Election by written ballot will be in accordance with all statutory requirements.

Section 5. QUORUM: The presence in person of a number equal to five percent of the voting Fellows, or 20 percent of the voting Fellows who, in writing to the Secretary, signified their intentions of attending the meeting, whichever is the smaller number, shall constitute a quorum for the transaction of business. Voting Fellows present at a duly called or held meeting at which a quorum was present at the commencement of the meeting may continue to do business until adjournment, notwithstanding the withdrawal of voting Fellows resulting in less than a quorum in attendance.

### **ARTICLE IV: Board of Regents**

Section 1. POWERS: The Board of Regents shall be the governing body of the College. The board shall have control of all affairs of the College, unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, and may adopt any procedure for performing its duties, including the delegation of those duties it believes are in the best interests of the College, subject to applicable law.

Section 2. ELECTION AND TERMS OF OFFICE OF REGENTS: The Board of Regents shall consist of between 39 and 42 members, called "Regents."

(a) Officer Regents: Six Fellows shall serve as Regents for the term during which each holds the office of President, President-Elect, Vice President, Secretary, or Treasurer, or is the immediate Past President ("Officer Regents").

(b) Elected Regents: Eleven Regents shall be elected annually, each to serve a term of three years or until a successor is elected and qualified ("Elected Regents").

(c) Executive Committee Regents: Up to an additional three Fellows shall serve as Regents for any period during which such Fellow is a member at large of the Executive Committee but not an Elected Regent. ("Executive Committee Regents").

(d) Election: Elected Regents shall be elected at the annual business meeting, or by a letter ballot mailed to all voting Fellows after nominations for Regents have been made as

provided in Section 3 of this Article. The 33 Elected Regents elected shall be designated by class corresponding to the year in which their terms of office terminate. Regents elected at an annual business meeting shall take office at adjournment of the Annual Meeting during which the annual business meeting occurs.

Section 3. **NOMINATIONS:** The Nominating Committee referenced in Article VIII, Section 2, below, must nominate as many voting Fellows for election as Elected Regents as there are vacancies to be filled at the annual business meeting at which the election will be held. The committee shall report on the nominations to the President at least 60 days before the annual business meeting. The written notice of the annual business meeting shall include the names of all Elected Regent nominees. Other nominations for the election to the Board of Regents may be made by a written nomination signed by not fewer than 50 voting Fellows and filed with the President not fewer than five days before the annual business meeting. Members of the Nominating Committee are ineligible for nomination as Elected Regent. Unless waived by consent of at least two thirds of the Regents, the following limitations shall govern the selection of each class of 11 Elected Regents.

(a) No Elected Regent shall serve more than two consecutive terms in office except that a member who is elected to fill a vacancy on the Board of Regents and serves for fewer than 14 months shall not be considered as having served a term for purposes of this subparagraph.

(b) An Elected Regent may become eligible for reelection after remaining out of office for one year.

Section 4. **VACANCIES:** A vacancy on the Board of Regents shall be filled by the election by the voting Fellows of a successor Regent for the unexpired term at the first annual business meeting following the occurrence of the vacancy. At any meeting of the Regents before the annual meeting, the then remaining Regents may elect an interim Regent to serve until a successor Regent is elected.

Section 5. **COMPENSATION:** Regents shall serve without compensation, but may receive reimbursement for expenses incurred on behalf of the College.

Section 6. **MEMBER EMERITUS:** Except when serving on the Board of Regents as an elected member, every past president of the College who is a Fellow, International Fellow, Academic Fellow, Judicial Fellow, or Retired Fellow in good standing is a Member Emeritus of the Board of Regents without vote.

#### **ARTICLE V: Meetings of Board of Regents**

Section 1. **ANNUAL MEETING:** As a part of the Annual Meeting of the College, the Board of Regents shall hold its

annual meeting at the place designated for the Annual Meeting of the College.

Section 2. **FALL MEETING:** A fall meeting of the Board of Regents shall be held annually at a time and place determined by the Board of Regents.

Section 3. **SPECIAL MEETINGS:** Special meetings of the Board of Regents may be called at any time by the President or, if he or she is absent or unable to act, by the President-Elect, or upon the written request of at least eight Regents.

Section 4. **NOTICE:** At least 5 days notice to each Regent of the time and place of the fall meeting or of a special meeting shall be given to each Regent.

Section 5. **ADJOURNMENT:** A quorum may adjourn any Board of Regents meeting to meet again at a stated time, place, and hour. In the absence of a quorum, the Regents present at any Board of Regents meeting may adjourn to another time.

Section 6. **NOTICE OF ADJOURNMENT:** Notice of the time and place of an adjourned meeting need not be given to absent Regents if the time and place is fixed at the meeting adjourned except that, if the meeting is adjourned for more than 24 hours, notice of any adjournment to another time and place shall be given prior to the time of the rescheduled meeting to the absent Regents.

Section 7. **ACTION WITHOUT MEETING:** Any action which may be taken at a meeting of the Board of Regents may be taken without a meeting if the action is authorized by unanimous consent of the Regents in writing or by electronic transmission. All such writings or electronic transmissions shall be filed with the minutes of proceedings of the Board of Regents.

Section 8. **QUORUM:** A majority of the members of the Board of Regents shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Regents present at a meeting duly held at which a quorum is present shall be regarded as an act of the Board of Regents unless a greater number is required by law, these Bylaws, or the Certificate of Incorporation.

Section 9. **ELECTRONIC PARTICIPATION:** Meetings of the Board may be conducted entirely through use of conference telephone or other communications equipment so long as all members participating in such a meeting can be heard. Participation by such means constitutes presence in person at such meeting.

#### **ARTICLE VI: Officers**

Section 1. **TITLES OF OFFICERS:** The officers of the College shall be President, President-Elect, Vice President,

Treasurer and Secretary. The Board of Regents may appoint other officers and agents it deems necessary and shall designate their respective powers and duties.

Section 2. PRESIDENT: The President is the chief executive officer of the College and, subject to the control of the Board of Regents, shall have general supervision of the affairs of the College; shall preside at all meetings of the College and of the Board of Regents; shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, unless otherwise provided in these Bylaws; and shall have other powers and duties prescribed by the Board of Regents or the Bylaws.

Section 3. PRESIDENT-ELECT: In the event of a vacancy in the office of President, or in the temporary absence or unavailability of the President, the President-Elect shall perform all the duties of the President and, when so acting, shall have all the powers of and shall be subject to all the restrictions placed upon the President. The President-Elect shall have other powers and duties prescribed by the Board of Regents. The performance of the duties of the office of President by the President-Elect shall not affect his or her succession to the office of President under Section 8 of this Article.

Section 4. VICE PRESIDENT: In the event of a vacancy in the office of President-Elect, or in the temporary absence or unavailability of the President-Elect, the Vice President shall perform all the duties of the President-Elect and when so acting shall have the powers of and shall be subject to all the restrictions placed upon the President-Elect. The Vice President shall have other powers and duties prescribed by the Board of Regents.

Section 5. TREASURER:

(a) The Treasurer shall keep or cause to be kept correct accounts of the properties and business transactions of the College including, but not limited to, the account of its assets, liabilities, receipts, disbursements, gains, losses, capital, and surplus. The books of account shall be open for inspection by any member at any reasonable time during normal business hours.

(b) The Treasurer shall deposit or cause to be deposited all monies and other valuables in the name and to the credit of the College with depositories designated by the Board of Regents; shall disburse the funds of the College as ordered by the Board of Regents; shall furnish to the Board of Regents at every meeting or, when requested by an officer or the Board of Regents, an account of all transactions as Treasurer and of the financial condition of the College; and shall have other powers and duties prescribed by the Board of Regents or the Bylaws.

(c) The Treasurer and employees receiving or handling funds shall be bonded in an amount determined by the Board of Regents.

Section 6. SECRETARY:

(a) The Secretary shall keep or cause to be kept a book of minutes at the principal office or such other place as the Board of Regents may order of all meetings of the College, the Board of Regents and the Executive Committee.

(b) The Secretary shall give or cause to be given notice of all meetings of the College and the Board of Regents, and shall have other powers and duties prescribed by the Board of Regents or the Bylaws.

(c) The Secretary shall keep or cause to be kept at the principal office of the College a Membership Roster showing the names and addresses of all members of the College of all classes, the date of issuance of certificates of membership, and the date of cancellation of every membership certificate.

(d) The duties of the Secretary may be delegated to the Executive Director by the Secretary from time to time.

Section 7. NOMINATION OF OFFICERS: The Nominating Committee shall nominate Fellows for election as officers. The rules applicable to nomination for the Board of Regents as prescribed by Article IV, Section 3, of these Bylaws shall apply as well to the nomination for officers. A Regent may nominate another candidate for office, orally, or in writing at the annual meeting of the Board of Regents. Members of the Nominating Committee are ineligible for nomination as officers.

Section 8. ELECTION OF OFFICERS: Officers of the College shall be elected from the voting Fellows of the College in good standing by the Board of Regents at its annual meeting, except that the President-Elect shall automatically succeed to the office of president upon the expiration of the President's term of office. Each officer shall serve one year and until a successor is elected. A person may hold only one office at one time. Each officer shall take office at the conclusion of the Annual Meeting during which his or her election shall occur or the Board of Regents meeting at which he or she shall be elected, whichever is later.

Section 9. REMOVAL AND RESIGNATION: An officer may be removed with or without cause by a resolution adopted by a two-thirds majority of the Board of Regents. Any officer may resign by giving written notice to the President and the Secretary.

Section 10. VACANCIES: Except for a vacancy in the office of president or president-elect, a vacancy in any office shall be filled by a majority vote of the Board of Regents.

## **ARTICLE VII: State, International, and Academic Membership Organizations**

Section 1. STATE CHAIR: At least 30 days before the Annual Meeting after which the President-Elect takes office as President, the President-Elect shall appoint one voting Fellow as State Chair for each geographical area (including a state,



portion of a state, multiple states and foreign jurisdictions or portions thereof) determined to be appropriate for the conduct of the affairs of the College from time to time by the Board of Regents, such appointments to take effect at the adjournment of the Annual Meeting at which the President-Elect takes office as President. A Regent may serve as a State Chair. The President may remove any State Chair for any reason, and may fill any vacancies for their unexpired terms.

#### Section 2. STATE MEMBERSHIP COMMITTEES:

(a) There shall be at least one state membership committee in each state which shall be advisory in nature and shall not have the authority of the Board of Regents. If a State Chair requests, and the Board of Regents approves, there may be more than one state membership committee in any state but the boundaries of the geographical area each committee shall cover shall be established by the Board of Regents upon recommendation from the applicable State Chair. The number of members of a state membership committee shall be determined by the State Chair.

(b) The State Chair shall from time to time appoint the members of the state membership committee or committees and shall serve as chair of the state membership committee if there is only one. If there is more than one, the State Chair shall serve as chair of the state membership committee for the geographical area of the state in which he or she performs all other duties delegated by the President. Appointment of the chair of the other committee or committees shall be the responsibility of the State Chair, and he or she shall be designated a Deputy State Chair. If requested, or if no such committee is appointed by a State Chair prior to 60 days before the applicable Annual Meeting, the President-Elect shall appoint the members of the state membership committee or committees.

(c) Members of the state membership committee shall serve at the pleasure of the State Chair.

(d) Each state membership committee shall promote the nomination of the best qualified eligible persons for election as a Fellow or an Academic Fellow.

(e) The state membership committee shall receive, review, consider, and make a recommendation to the Membership Selection Committee regarding each nomination for membership received by it. Each recommendation is to be written and is to be timely delivered to the Membership Selection Committee or to the Membership Administrator.

#### Section 3: INTERNATIONAL MEMBERSHIP COMMITTEE:

(a) There shall be an International Membership Committee which shall be advisory in nature.

(b) The President-Elect of the College, after consultation with the Chair of the International Estate Planning Committee, shall appoint the members of the International Membership Committee, to serve a one-year term.

(c) Members of the International Membership Committee are eligible for reappointment. Vacancies for the unexpired terms which occur between Annual Meetings of the College may be filled by the President of the College.

(d) The International Membership Committee shall promote the nomination of the best qualified eligible persons for election as an International Fellow.

(e) The International Membership Committee shall

(i) receive and review each nomination of an International Fellow before any poll is taken,

(ii) make a preliminary investigation into the professional, ethical, personal and other qualifications of the candidate,

(iii) if the preliminary investigation described in Subsection (ii) above indicates that the candidate meets the criteria for the election of an International Fellow, submit the nomination to the Membership Administrator with instructions that the poll of the present and past members of the International Estate Planning Committee and all International Fellows described in Article II, Section 3 (e), should be taken,

(iv) review the poll results of the present and past members of the International Estate Planning Committee and all International Fellows, and, based on that poll and any further independent investigation deemed appropriate by the International Membership Committee into the professional, ethical, personal and other qualifications of the candidate, recommend or not recommend the nomination, and

(v) submit each recommended nomination to the Membership Selection Committee with a detailed written description of the investigation made regarding the candidate and the results of that investigation.

#### Section 4: ACADEMIC MEMBERSHIP COMMITTEE:

(a) There shall be an Academic Membership Committee which shall be advisory in nature.

(b) The President-Elect of the College, after consultation with the Academic Fellow who is Chair or Co-chair of the Legal Education Committee, shall appoint the members of the Academic Membership Committee, to serve a one year term. The Academic Fellow who is Chair or Co-chair of the Legal Education Committee shall serve as chair of the Academic Membership Committee.

(c) Members of the Academic Membership Committee are eligible for reappointment. Vacancies for the unexpired terms which occur between Annual Meetings of the College may be filled by the President of the College.

(d) The Academic Membership Committee shall promote the nomination of the best qualified eligible persons for election as an Academic Fellow.

(e) The Academic Membership Committee shall

(i) receive and review each nomination of an Academic Fellow before any poll is taken,

(ii) review the poll results of the Academic Fellows and of all Fellows in each jurisdiction in which the nominee teaches or in which the nominee has taught or practiced within the ten years prior to the nomination, and, based on those poll results and any further independent investigation deemed appropriate by the Academic Membership Committee into the professional, ethical, personal, and other qualifications of the candidate, recommend or not recommend the nomination, and

(iii) submit each recommended nomination to the Membership Selection Committee with a detailed written report.

#### **Article VIII: Committees**

The committees of the College shall be the Executive Committee, Nominating Committee, Membership Selection Committee, Financial Management Committee, Audit Committee, International Membership Committee, Academic Membership Committee, standing committees, and taskforces. A committee shall have the authority of the Board of Regents only if (i) the committee is created by the Board or these Bylaws, (ii) the Board or these Bylaws provides that the committee shall have that authority, (iii) at least two members of the committee are required to be Regents, and (iv) any formal corporate action taken by such committee is approved by a majority vote of the Regents serving on such committee.

Section 1. EXECUTIVE COMMITTEE: The Executive Committee shall consist of nine members of the Board of Regents, including the President, President-Elect, Vice President, Secretary, Treasurer and the immediate Past President. In addition, there shall be three members at large elected for staggered terms of three years by a majority vote of the Regents then in office. The three members at large shall not be eligible for immediate reelection unless such reelection would, for a member of the committee serving the unexpired term caused by a vacancy, result in an aggregate term of not more than four years. The President-Elect shall nominate one new member at large for a term of three years. A vacancy shall be filled, for the unexpired term, by election by the Board of Regents after nomination by the person who is or will be President when the vacancy occurs. The President shall be the

chair of the committee. The Secretary shall be secretary of the committee. The Executive Committee shall function as a steering committee for the Board of Regents, and between meetings of the Board of Regents, the Executive Committee shall control the affairs of the College, with all authority of the Board of Regents except it shall not: (i) amend or repeal the Bylaws or adopt new Bylaws, (ii) fix dues, (iii) fill vacancies on the Board of Regents or the Executive Committee, (iv) create committees having the authority of the Board, (v) elect officers or members or adopt rules or regulations with respect to the election of officers or members, or (vi) approve any action which also requires the approval of the voting Fellows. The Executive Committee may act at a regular or special meeting in person, by telephone conference or other communication medium which permits all participants to hear and speak with each other, by unanimous written consent, or by any other manner permitted by Delaware law.

Section 2. NOMINATING COMMITTEE: Prior to taking office as President, the President-Elect shall appoint a Nominating Committee of not fewer than seven members to serve from the adjournment of the Annual Meeting after which the President-Elect takes office as President to the adjournment of the next Annual Meeting.

Section 3. MEMBERSHIP SELECTION COMMITTEE:

(a) The Membership Selection Committee shall consist of nine members, a majority of whom are present or past Regents. Three members shall be appointed each year by the President-Elect no less than 45 days prior to the Annual Meeting to serve a term of three years commencing with the adjournment of that Annual Meeting. The President-Elect, in determining appointments, will ensure that a simple majority of past or present Regents will be maintained. The committee shall elect its Chair and such other officers it deems advisable and shall adopt parliamentary rules regarding the conduct of its meetings.

(b) No member of the committee may serve more than two consecutive terms. However, a member may be eligible for reappointment after remaining off the committee two years. Vacancies on the committee shall be filled by the President by appointment of members for the applicable unexpired term.

(c) Prior to each meeting of the Board of Regents, the committee shall: (i) receive and review all nominations for membership and accompanying recommendations which are delivered by state membership committees, the academic membership committee, and the international membership committee at least 14 days prior to the meeting, (ii) consider the relative qualifications of nominees and geographical distribution of the existing membership of the College, (iii) determine which nominees appear to be best qualified for election as members, and (iv) submit in writing to the Board of Regents at the applicable meeting a list of all nominations received from each state membership committee, the academic

membership committee, and the international membership committee, accompanied by its recommendation of the best qualified nominees for election as members by the Board of Regents.

**Section 4. FINANCIAL MANAGEMENT COMMITTEE:** There shall be a Financial Management Committee consisting of six Fellows. The committee shall include the Fellows then serving as Vice President, Treasurer and Secretary. The Financial Management Committee shall also include three Fellows who have been nominated by the Executive Committee and elected by the Board of Regents at an Annual Meeting each to serve a term of three years or until his or her successor is duly elected and qualified. The terms of the elected members of the Financial Management Committee shall be staggered. No elected Fellow may serve more than two consecutive three year terms. The elected members of the Financial Management Committee shall be Fellows who are experienced in the matters to be addressed by the committee. The Financial Management Committee may include Fellows who are not Regents. The Chair of the committee shall be appointed by the Executive Committee and shall serve a term of three years. A vacancy on the Financial Management Committee shall be filled for the balance of the unexpired term by the Board of Regents after the Executive Committee nominates a Fellow to fill such vacancy. The Financial Management Committee shall monitor and provide reports and recommendations to the Executive Committee and the Board of Regents on all matters pertaining to the financial management of the affairs of the College including budgeting, risk management, fiscal policies, and investment policies. The Financial Management Committee shall monitor the performance of the College's investment manager(s) and make recommendations to the Board of Regents regarding the selection, retention and termination of such manager(s).

**Section 5. AUDIT COMMITTEE:** There shall be an Audit Committee consisting of four Fellows. The Fellow then serving as Vice President shall be a member of the committee. The other three members of the Audit Committee shall be Fellows who are not then serving on the Executive Committee or the Financial Management Committee. The Audit Committee may include persons who are not members of the Board of Regents. The members of the Audit Committee (other than the Vice President of the College) shall be nominated by the Executive Committee and elected by the Board of Regents at an Annual Meeting each to serve a term of three years or until his or her successor is duly elected and qualified. The terms of the elected members of the Audit Committee shall be staggered. No elected Fellow may serve more than four consecutive three year terms. The members of the Audit Committee shall be Fellows who are experienced in the matters to be addressed by the committee and who are selected for their independence in judgment. The Chair of the Audit Committee shall be nominated by the Executive Committee and elected by the Board of Regents. The Chair may not be a member of the Financial Management

Committee and need not be a member of the Board of Regents. A vacancy on the Audit Committee shall be filled for the balance of the unexpired term by the Board of Regents after the Executive Committee nominates a Fellow to fill such vacancy. The Audit Committee shall keep full records and accounts of its proceedings and transactions. Any recommendation by the Audit Committee shall be reported to the Executive Committee as soon as is possible and to the Board of Regents at its meeting next succeeding such action and shall be subject to control, revision, and alteration by the Board of Regents, provided that no rights of third persons shall be prejudicially affected thereby. Subject to the supervision of the Board of Regents, the Audit Committee shall have the following specific duties:

1. Recommend to the Board of Regents the selection, retention and termination of a qualified firm of certified public accountants to perform the College's annual fiscal audit(s) in accordance with Generally Accepted Auditing Standards (GAAS).
2. Approve all specifications of the annual fiscal audit(s) prior to retention of the recommended firm of certified public accountants, including the compensation of that firm.
3. Review the findings of all fiscal audit(s) upon completion and conduct an executive session thereon with the auditors to: (i) determine whether to recommend acceptance of the audit report; (ii) approve all non-audit services performed by the firm for the College; and (iii) assure that all observations and recommendations made in the audit and by the audit firm are duly considered.
4. Review the implementation of the College's internal financial controls through the audit process, and in cooperation with the outside auditors make recommendations from time to time to the Board of Regents for the adoption of policies that will improve the internal financial controls of the College.

**Section 6. STANDING COMMITTEES:** The President, Board of Regents or the Executive Committee may create standing committees deemed necessary or advisable to further the purposes of the College. The President-Elect also may propose standing committees to be created when he or she takes office as President. Standing committees shall continue in existence until expressly terminated. Ordinarily, all appointments of members to present or proposed standing committees, including the officers thereof, shall be made by the President-Elect at least 45 days prior to the Annual Meeting after which he or she takes office as President, except that the person or entity creating a standing committee will ordinarily appoint the initial members and officers of such committee. The term of office for members of standing committees shall be one year.

Section 7. **TASK FORCES:** The President, the Board of Regents or the Executive Committee may create task forces deemed advisable to further the purposes of the College. The President-Elect also may propose other task forces to be created when he or she takes office as President. A task force created under this Section 7 shall terminate at the end of the fourth Annual Meeting following the creation of the task force, unless specifically provided otherwise by the person or entity creating the task force or by the Executive Committee. Ordinarily, all appointments of members to present or proposed task forces appointed under this Section 7 are to be made by the President-Elect at least 45 days prior to the Annual Meeting after which the President-Elect takes office as President, except that the person or entity creating a task force will ordinarily appoint the initial members and officers of such task force. The term of office for members of task forces shall be one year.

Section 8. **COMMITTEE CHAIR, VICE CHAIR, AND TENURE:** Except as otherwise specifically provided herein, the President-Elect shall appoint the chair and, if applicable, the vice chair and other officers of standing committees and task forces from the members appointed to the applicable standing committees or task forces, such appointments to take effect at the adjournment of the Annual Meeting after which the President-Elect takes office as President. No member may serve more than three consecutive one-year terms as committee chair, but may be eligible for reappointment or reelection as chair after remaining out for one year. The President may remove the chair of any standing committee or task force for any reason, and may fill any vacancies for their unexpired term.

#### **ARTICLE IX: Code of Conduct**

Section 1. **PURPOSE:** In order to foster and maintain a welcoming and inclusive environment as described in Article I hereof, the Board of Regents shall adopt a written Code of Conduct. The Code of Conduct shall have the effect of a Bylaw and may not be amended or repealed except in accordance with the requirements of Article XIII, Section 2 below.

Section 2. **IMPLEMENTATION:** The Code of Conduct is applicable to conduct at all ACTEC meetings and other ACTEC activities. The Code of Conduct shall describe generally the procedures for identifying, reporting, investigating and resolving alleged violations. Such procedures shall include the utilization of two or more Ombudspersons to be appointed by the Executive Committee, which shall determine the length of their service. The determination of whether a violation has occurred, and what sanctions, if any, shall be imposed shall be the responsibility solely of the Executive Committee. In the event of egregious

violations of the Code of Conduct, potential sanctions shall include expulsion from the College, which is separate and distinct from the termination of membership provided for in Article II, Section 6 above. The Executive Committee shall adopt provisions implementing and interpreting the Code of Conduct, which shall be published in the College's Policies, Practices and Procedures Manual.

#### **ARTICLE X: Miscellaneous**

Section 1. **RECORD DATE:** The record date for determination of members entitled to notice of, and the right to vote at, a meeting of the College shall be 60 days before the applicable meeting, unless the Board of Regents, in advance, fixes a later record date, which shall be not fewer than 10 days before the meeting.

Section 2. **INSPECTION OF CORPORATE RECORDS:** The Membership Roster, the books of account, and minutes of proceedings of the College, the Board of Regents, and the Executive Committee (other than proceedings of the Executive Committee determined by such committee to be confidential), shall be open to inspection by all members upon the written demand of any member at any reasonable time during normal business hours. Inspection may be made in person, or by an agent or attorney, and includes the right of the inspecting person to make copies. Demand of inspection, other than at the annual business meeting or a special meeting of the College, shall be made in writing to the President or Secretary.

Section 3. **METHODS OF PAYMENT:** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the College, are to be signed or endorsed by the person or persons as determined and designated by resolution of the Board of Regents from time to time.

Section 4. **MANUAL:** The Board of Regents shall cause a manual containing the current policies and procedures of the College to be maintained and published.

Section 5. **ANNUAL REPORT:** The Board of Regents shall cause to be prepared an annual financial report in compliance with applicable provisions of Delaware law and shall give notice yearly to all members of the right to review the report.

Section 6. **CONTRACTS AND OTHER DOCUMENTS:** Unless the Bylaws or Certificate of Incorporation provide otherwise, the Board of Regents or (between meetings of the Board of Regents) the Executive Committee may authorize any officer or agent to enter into any contract, or execute any instrument on behalf of the College. Unless authorized, no officer, agent, or employee shall have authority to bind the College by any agreement, or to pledge its assets or credit, or to render it liable in any manner subject to the provisions of applicable law.

Section 7. CERTIFICATES OF MEMBERSHIP: A certificate of membership of the College shall be issued to each new member. Each certificate shall bear the signature, actual or facsimile, of the President or President-Elect and the Secretary.

Section 8. INSPECTION OF BYLAWS: The College shall keep in its principal office the original or a copy of the Bylaws, with all amendments, certified by the Secretary, which shall be open to inspection by members at all reasonable times during normal business hours.

Section 9. GENDER AND NUMBER: As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall each include the other whenever the context so indicates.

Section 10. LIABILITY: Members shall not be liable personally for the debts, liabilities or other obligations of the College.

Section 11. RIGHT OF INDEMNIFICATION: To the fullest extent permitted by law, the College shall indemnify any member or person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative, because the member or person is or was a Regent, officer, employee, or agent of the College or is or was serving at the request of the College as a director, officer, employee, or agent of another entity, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with the action, suit, or proceeding, actual or threatened, if the member or person acted in good faith and in a manner reasonably believed to be in the best interest of the College, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The right of indemnification shall inure to the member or person and the member's or person's legal successors and representatives.

Section 12. EXECUTIVE DIRECTOR: The College shall employ an Executive Director, who shall not be an officer and need not be a member, who shall have charge of the principal office of the College and shall have other duties delegated by the Board of Regents or officers from time to time.

Section 13. MEMBERSHIP ADMINISTRATOR: The College shall employ a Membership Administrator, who shall not be an officer and need not be a member, who shall have charge, under the direction and supervision of the Executive Director, of the administration of the membership of the College. The Membership Administrator shall have such other duties related to the membership as may be delegated by the Board of Regents, officers, the Executive Director, or the Membership Selection Committee, from time to time.

Section 14. DEFINITION OF "YEAR": For the purposes of these Bylaws, unless the context clearly is to the contrary, "year" shall mean the period from the adjournment of an Annual Meeting to the adjournment of the next Annual Meeting.

Section 15. VACANCIES: As to any officer, Regent or committee chair, a vacancy shall be deemed to occur in the case of the office-holder's death, resignation, removal, ceasing to be a Fellow or medical inability to perform his or her duties, if certified by a treating physician.

Section 16. PRINCIPAL OFFICE: The principal office of the College shall be maintained in such location as shall be determined by the Board of Regents.

Section 17. NOTICES AND WAIVERS: Any notice required to be given hereunder may be given by first-class mail, personal delivery, private delivery service or electronic mail, in each case addressed to the address provided by the individual to the College. Any notice may be waived either before or after the date by which such notice is required to be given.

#### **ARTICLE XI: Terms**

Service of a term as an officer, Regent, member of a committee, committee chair, or state chair of The American College of Trust and Estate Counsel, a nonprofit mutual benefit corporation organized under the laws of the State of California will be considered as service of a term as an officer, Regent, member of a committee, committee chair, or state chair of the College under these Bylaws.

#### **ARTICLE XII: Parliamentary Authority**

The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the College in all cases to which they are applicable and in which they are not inconsistent with these Bylaws, any special rules of order the College may adopt or applicable law.

#### **ARTICLE XIII: Effective Date and Amendments**

Section 1. EFFECTIVE DATE: These Bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective immediately upon their adoption unless the Board of Regents or voting Fellows in adopting them provide that they are to become effective at a later date.

Section 2. AMENDMENTS: These Bylaws may be amended or repealed and new Bylaws adopted by the affirmative vote of at least two thirds of the Regents present at a duly held meeting of the Board of Regents at which a quorum is present,

upon proper notice, unless the action would (i) materially and adversely affect the rights of members as to voting, dissolution, redemption, or transfer, (ii) increase or decrease the number of members authorized in total or for any class, (iii) effect an exchange, reclassification, or cancellation of all or part of the memberships, or (iv) authorize a new class of membership, except that Bylaws affecting the following may be adopted, amended, or repealed only by the affirmative vote of a majority of the votes represented and voting at a duly held meeting of members at which a quorum is present or by written ballot pursuant to Article III, Section 4:

- a) A Bylaw specifying or changing the number of Regents;
- (b) A Bylaw increasing the term of office of Regents;

(c) A Bylaw increasing the quorum of members; and

(d) A Bylaw repealing or amending the right to cumulative voting.

For purposes of this Section 2, proper notice shall mean notice of the intention to amend the Bylaws and the substance of the proposed amendment (or amendments) given at least 10 days before the meeting. Any amendment to the Bylaws adopted at such meeting shall be valid so long as it addresses substantially the same issue as a proposed amendment contained in the notice. Within a reasonable time after adoption, the text of each amendment is to be mailed to all voting Fellows or is to be made available on the College's website.

CERTIFICATE OF SECRETARY

I, the undersigned, certify:

1. That I am the duly elected and acting Secretary of The American College of Trust and Estate Counsel.
2. That the foregoing Bylaws constitute the Bylaws of the College adopted by the incorporator on December 30, 2010, and ratified by the unanimous written consent of the Board of Regents on January 25, 2011, and as amended by the Board of Regents on October 16, 2011, on March 11, 2012, March 10, 2013, October 19, 2014, March 8, 2015, March 20, 2016, October 23, 2016, March 12, 2017, October 22, 2017, March 11, 2018, October 28, 2018, October 20, 2019, March 8, 2020, November 6, 2022, and March 5, 2023.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of the 5<sup>th</sup> day of March 2023.

  
Margaret G. Lodise, Secretary